

### **REMARKS**

This responds to the Office Action dated 14 July 2005. Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and following remarks. Claims 9 and 15 have been amended. Claims 3, 10, 16, and 17 have been canceled. New claims 21 and 22 have been added. Therefore, claims 1, 2, 4-9, 11-15, and 18-22 remain pending in the application.

### **Claim Rejections – 35 USC § 112**

The Examiner rejected claims 15-20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. In particular, the Examiner notes that the term “the carrier tube” in claim 15 lacks antecedent basis. Thus, Applicant has amended claim 15 to afford it proper antecedent basis. However, Applicant points out that the amendment to claim 15 is not a narrowing amendment to overcome any prior art. The amendment to claim 15 is strictly a clarifying amendment.

### **Objections to the Specification and Claims**

The Examiner objected to the specification and claims 3 and 17 for failing to provide proper antecedent basis for the recitation of both a carrier tube and a bypass tube. Applicant believes that the explanation of the carrier tube and bypass tube is sufficiently clear in the specification. Nevertheless, in an effort to expedite prosecution of the case, Applicant has canceled claims 3, 16, and 17, without prejudice.

**In the Drawings**

The Examiner objected to the drawings under 37 CFR § 1.83(a) for failing to show every feature of the invention specified in the claims. In particular, the Office states that the “at least one membrane” and the “bypass tube” must be shown or canceled from the claims. Although Applicant believes the features are adequately shown or described, Applicant has canceled claims 3, 10, 16, and 17 to expedite prosecution of the case, without prejudice.

**Claim Rejections – 35 USC § 102**

The Examiner has rejected claims 1, 2, and 4-14 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,301,538 to Recla (“the ‘538 Recla patent”). The Examiner contends, with little or no specificity, that the ‘538 Recla patent discloses certain of the claim limitations. However, the Examiner did not address each of the limitations recited in the rejected claims. Applicant respectfully traverses the rejection.

As the Examiner knows, for a prior art reference to anticipate in terms of 35 U.S.C. § 102, each and every element of the claimed invention must be *identically* shown in a single reference. *Diveritech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, (Fed. Cir. 1988). Further, the identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Nevertheless, each of the rejected claims originally contained, or currently contains, elements not disclosed or suggested by the ‘538 Recla patent.

Claims 1 and 11 recite “[a] collagen deployment assembly.” The ‘538 Recla patent, on the other hand, teaches a pipeline leak detector tube. The Examiner does not

even allege that the '538 Recla patent discloses "[a] collagen deployment assembly." The Examiner inexplicably ignores the "collagen deployment assembly" language, and the '538 Recla patent does not teach or suggest it. Again, a proper § 102 rejection requires identical disclosure in as complete detail as is contained in the claims. Because the '538 Recla patent fails to disclose "[a] collagen deployment assembly," the rejection of claims 1 and 11 (and the claims that depend therefrom) under 35 USC § 102(b) should be withdrawn.

Further, the Examiner ignored or "read out" other claim limitations without explanation as well. For example, claims 1 and 11 specify that the "tube [is] adapted to deliver and deploy a collagen." The Examiner does not address this limitation, and therefore the Examiner has not established a *prima facie* case of anticipation. Applicant does not know which component of the '538 Recla patent the Examiner contends is a "tube." The Examiner does not point to any "tube" taught by the '538 Recla patent. Applicant can not discern any "tubes" in the '538 Recla patent enabling "delivery and deploy[ment] of a collagen." A Section 102 rejection requires complete detail disclosing the "collagen" limitation, which Applicant believes is completely missing from the '538 Recla patent.

Similarly, claims 1 and 11 each contains additional "collagen" limitations. Claim 1 expressly recites "at least one perforation contained in the tube to allow the collagen being delivered and deployed to wet prior to deployment." Claim 11 recites "means for wetting adapted to allowing a solution to wet the collagen prior to deployment." The '538 Recla patent does not disclose a collagen, nor does the '538 Recla patent teach wetting a collagen through perforations or any other means. The

Examiner does not address these “collagen” limitations. Again, the required details as recited in the claims must be identically shown for a proper anticipation rejection. The Examiner addressed a select few limitations of claim 1, but appears to have missed other limitations that clearly are not taught or suggested by the ‘538 Recla patent. The ‘538 Recla patent fails to disclose many of claim limitations found in claims 1 and 11 because the ‘538 Recla patent has nothing to do with collagen deployment. Rather, it is directed to a leak detector. Accordingly, Applicant respectfully requests that the rejection of claims 1 and 11 be withdrawn.

Claims 2, 4-9, and 12-13 depend from either claim 1 or claim 11, and should be allowable for the reasons set forth above. In addition, Applicant respectfully submits that at least claims 5 and 14 contain additional limitations that are neither taught nor suggested in ‘538 Recla patent. Claims 5 and 14 recite “slots,” which are not taught or suggested in the ‘538 Recla patent. Section 102 requires identical teaching in detail commensurate with the detail in the claims. Thus, the ‘538 Recla patent does not meet the *prima facie* requirements for anticipation.

Accordingly, for at least the reasons offered above, Applicant requests that the rejection of claims 1, 2, 4-9, and 11-14 under 35 U.S.C. § 102 over the ‘538 Recla patent be withdrawn.

The Examiner has rejected claim 15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,290,718 to Grooms et al. (“the ‘718 Grooms patent”). The Examiner alleges with little specificity that the ‘718 Grooms patent discloses certain of the claim limitations. However, the Examiner fails to identify what

components of the '718 Grooms patent actually show the recited claim limitations. Applicant respectfully traverses the rejection.

For example, the Examiner does not address the "vascular closure device" found in claim 15. Applicant believes the "vascular closure device" language must be considered. Claim 15 has been amended to add "vascular closure device" to the main body of the claim, rather than just the preamble, to ensure that this limitation is considered. Applicant notes, however, that claim 15 has not been narrowed for any reason related to patentability, it retains its original scope and has been amended only to more clearly and/or comprehensively articulate the claim elements. The '718 Grooms patent is directed to an implantable stent and has nothing to do with vascular closure devices. The '718 Grooms patent is not analogous art and most certainly does not disclose "a vascular closure device."

Moreover, the '718 Grooms patent does not teach a "carrier tube" or a collagen sponge "inside the carrier tube." First, a "carrier tube" must "carry" something, and the stent disclosed by the '718 Grooms patent does not appear to carry anything. Therefore the '718 Grooms patent does not disclose "a carrier tube." Further, although the '718 Grooms patent mentions in passing that the implant may include a "coating of...collagen," claim 15 states that "the collagen sponge resides *inside* the carrier tube." A coating on a stent does not satisfy the "inside" limitation.

Accordingly, for at least the reasons offered above, Applicant requests the Examiner to withdraw the rejection of claim 15 under 35 U.S.C. § 102 over '718 Grooms patent.

Applicant has canceled claims 16 and 17, without prejudice. Claims 18-20 should be allowable for the same reasons associated with claim 15.

**New Claims**

New claims 21 and 22 each include limitations not taught or suggested by the prior art of record. To be sure, neither the '538 Recla patent nor the '718 Grooms patent teaches or suggests a vascular or tissue puncture closure device. In addition, neither the '538 Recla patent nor the '718 Grooms patent teaches or suggests a collagen sponge deployment assembly recited in claim 21 or many of the other structures recited in claim 22 (*e.g.* an anchor, a suture, a collagen sponge slidably attached to the suture, *etc.*). The '538 Recla patent and the '718 Grooms patent are simply nonanalogous art.

The new claims are fully supported by the original specification and figures.

**CONCLUSION**

Applicant respectfully submits that all claims should now be in condition for allowance. Applicant respectfully requests the Examiner to telephone the undersigned attorney if there are unresolved matters in the present application to expedite the examination process.

Respectfully submitted,

Date: \_\_\_\_\_

14 OCTOBER 2005



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